

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 890 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos.1 to 5 - No.
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PANCHAL KANTABEN KANTILAL

Versus

PANCHAL KANTILAL MANGALDAS

Appearance:

MR VASANT S SHAH for Petitioners
MR PM THAKKAR for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/01/97

ORAL JUDGEMENT

Petitioners herein are the wife and children of the respondent No.1. The petitioners were estranged from respondent No.1 and were residing separately. All the petitioners made a Misc.Cri.Application No.14 of 1985 before the learned Judicial Magistrate, Kadi and claimed maintenance from the respondent No.1. The said claim was disposed of in accordance with the compromise arrived at by the petitioners and the respondent No.1. According to the said compromise the petitioner No.1 wife was allowed

a monthly maintenance of Rs.150/- and the minor children, petitioners Nos. 2 & 3 were allowed monthly maintenance of Rs.125/- each.

The petitioners thereafter preferred a Misc.Criminal Application no.115 of 1987 before the learned Judicial Magistrate, First-Class, Kadi for enhancement of the amount of maintenance considering the increase in the earnings of the respondent No.1. It was contended that the salary of the respondent No.1 who was a teacher in the primary school had increased by Rs.150/and that he had a share in the agricultural land owned by his father and his agricultural income had also increased. Petitioners, therefore, demanded that the petitioner no.1 be paid monthly maintenance of Rs.250/and the petitioners Nos. 2 & 3 each be paid a monthly maintenance of Rs.200/-. The said application was opposed by the respondent No.1. It was contended that his salary had increased by Rs.150/-, but at the same time the cost of living had also increased. He further contended that the petitioner No.2 had attained majority in the year 1986 and that she was capable of maintaining herself. She, therefore, was not entitled for maintenance as ordered earlier. The learned Magistrate under his order dated 30th May 1988 enhanced the maintenance payable to the petitioner No.1 to Rs.180/per month and the petitioners Nos. 2 & 3 Rs.135/- per month.

Feeling aggrieved, the petitioners preferred Criminal Revision Application No.74 of 1988 before the learned Additional Sessions judge, Mehsana, and the respondent No.1 preferred Criminal Revision Application No.71 of 1988. Both the above-referred revision applications were disposed for by the learned Additional Sessions Judge under a common judgment and order passed on 17th June, 1989. The learned Sessions Judge allowed the revision application no.71/88 preferred by the respondent No.1 and cancelled the order of maintenance made in favour of the petitioner No.2 with effect from the date she attained majority. The learned Session Judge also allowed the revision application no.74/88 and enhanced the maintenance awarded to the petitioner No. 1 to Rs.200/- and petitioner No.2 Rs.150/- till she attained the age of majority. Feeling aggrieved the petitioners have preferred this application and have claimed that unless there was an application made by the respondent No.1 for alteration in the order of maintenance made in favour of the minor children, same could not have been altered. Learned Advocate Mr.Shah has relied upon section 127 of the Code of Criminal Procedure and has submitted that in the changed

circumstances, the order of maintenance can be altered, but there should be an application by the person demanding such alterations. He has also relied upon the judgment of the Hon'ble Supreme Court in the matter of Jagir Singh v. Ranbir Singh and another (AIR 1979 S.C.381) and the judgment of the Kerala High Court in the matter of K.P.Nair vs. Pilakkavil Maveli Kunhi Parvathi Amma and others(1967 Cri.L.J.1231). In both the above referred judgments the courts have held that on attaining the majority a child would be disentitled to receive maintenance from the parent and the court would be competent to cancel the order of maintenance made in favour of the child on his/her attaining the age of majority. In neither of the above cases the court has held that such cancellation can be made only on an application made by the parent demanding cancellation of order of maintenance. There is nothing in section 127 of the Code of Cri.Procedure which would lend support to the contention raised by Mr.Shah. Section 127 of the Code of Cri.Procedure empowers the Magistrate, inter alia, on proof of change in the circumstance of any person, inter alia, receiving a monthly allowance to make such alterations in the allowance as he thinks fit. The said section does not require that an application has to be made in this respect by the person demanding such alteration. All that is required is such alterations can be made on proof of change in the circumstances. Such order can be made on an application preferred by either of the parties. In the present case, the application was made by the petitioners for an alteration in the order of maintenance on the ground of increase in the earning of the respondent No.1. I am of the view that on proof of the petitioner No.2 having attained the age of majority the learned Magistrate could have cancelled the order of maintenance made in favour of the petitioner No.2. I, therefore, reject the contention raised by Mr.Shah.

Mr.Shah has next contended that there was considerable increase in the income of the respondent No.1 since there was an increase in the salary as well as agricultural income. Petitioners, however, have failed to show the extent of increase in the agricultural income of the respondent No.1. In my view, in the absence of any evidence, the courts below were fully justified in not taking into consideration such increase while awarding enhanced maintenance. The learned Additional Sessions Judge, considering the increase in the income of the salary of the respondent No.1, and considering the cancellation of maintenance awarded to the petitioner No.2, has enhanced the monthly maintenance allowed to the petitioners Nos.1 & 3 to Rs.200/- and

Rs.150/respectively. Learned Advocate Mr.Shah has failed to show any error in the amount determined by the learned Sessions Judge. In the circumstances, the same cannot be interfered with.

The petition is, therefore, dismissed.
Rule is discharged.
